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*** Current through the 2012 Regular Session ***

TITLE 91. TRUSTS AND ESTATES
CHAPTER 9. TRUSTS AND TRUSTEES
ARTICLE 11. FAMILY TRUST PRESERVATION ACT OF 1998

GO TO MISSISSIPPI STATUTES ARCHIVE DIRECTORY

Miss. Code Ann. § 91-9-501 (2012)

§ 91-9-501. Definitions

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Trust" means the following:

(i) An express trust, private or charitable, with additions thereto, wherever and however created; or

(ii) A trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust.

(b) "Trust" excludes the following:

(i) Constructive trusts, other than those described in paragraph (a)(ii) of this section, and resulting trusts;

(ii) Guardianships and conservatorships;

(iii) Executors and administrators of decedent's estates;

(iv) Totten trust accounts;

(v) Custodial arrangements pursuant to the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state;

(vi) Business trusts that are taxed as partnerships or corporations;

(vii) Investment trusts subject to regulation under the laws of this state or any other jurisdiction;

(viii) Common trust funds;

(ix) Voting trusts;

(x) Security arrangements;

(xi) Transfers in trust for purpose of suit or enforcement of a claim of right;

(xii) Liquidation trusts; or

(xiii) Any arrangement under which a person is nominee or escrowee for another.

(c) "Trustee" means an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(d) "Trust instrument" means a written instrument which creates, defines or determines a trust, including, but not limited to, a last will and testament of a decedent.

HISTORY: SOURCES: Laws, 1998, ch. 460, § 1, eff from and after passage (approved March 23, 1998).

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

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Miss. Code Ann. § 91-9-503 (2012)

§ 91-9-503. Beneficiary's interests not subject to transfer; restrictions on transfers and enforcements of money judgments

Except as provided in Section 91-9-509, if the trust instrument provides that a beneficiary's interest in income or principal or both of a trust is not subject to voluntary or involuntary transfer, the beneficiary's interest in income or principal or both under the trust may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary.

HISTORY: SOURCES: Laws, 1998, ch. 460, § 2, eff from and after passage (approved March 23, 1998).

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Miss. Code Ann. § 91-9-505 (2012)

§ 91-9-505. Trust monies designated for education or support of beneficiary; restrictions on transfers and enforcements of money judgments

Except as provided in Section 91-9-509, if the trust instrument provides that the trustee shall pay income or principal or both of a trust for the education or support of a beneficiary, the beneficiary's interest in income or principal or both under the trust, to the extent the income or principal or both is necessary for the education or support of the beneficiary, may not be transferred and is not subject to the enforcement of a money judgment until paid to the beneficiary. This section shall not be applied or construed to limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

HISTORY: SOURCES: Laws, 1998, ch. 460, § 3, eff from and after passage (approved March 23, 1998).

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Miss. Code Ann. § 91-9-507 (2012)

§ 91-9-507. Trust monies designated for payments in trustee's discretion; restrictions and liability on payments to transferees or creditors; beneficiary's right to compel payments by trustee

(1) Except as provided in Section 91-9-509, if the trust instrument provides that the trustee shall pay to or for the benefit of a beneficiary so much of the income or principal or both of a trust as the trustee in the trustee's discretion sees fit to pay, a transferee or creditor of the beneficiary may not compel the trustee to pay any amount from the trust that may be paid only in the exercise of the trustee's discretion. This subsection shall not be applied or construed to limit or otherwise diminish a restraint on transfer that is valid under Section 91-9-503.

(2) If the trustee has knowledge of a transfer of a beneficiary's interest in a trust or has been served with process in a proceeding for garnishment or attachment or the like by a judgment creditor seeking to reach a beneficiary's interest in a trust, and the trustee pays to or for the benefit of the beneficiary any part of the income or principal of the trust that may be paid only in the exercise of the trustee's discretion, the trustee is liable to the transferee or creditor to the extent that the payment to or for the benefit of the beneficiary impairs the right of the transferee or creditor. This subsection does not apply if the beneficiary's interest in the trust is subject to a restraint on transfer that is valid under Section 91-9-503.

(3) This section applies regardless of whether the trust instrument provides a standard for the exercise of the trustee's discretion.

(4) Nothing in this section limits any right the beneficiary may have to compel the trustee to pay to or for the benefit of the beneficiary all or part of the income or principal of a trust.

HISTORY: SOURCES: Laws, 1998, ch. 460, § 4, eff from and after passage (approved March 23, 1998).

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Miss. Code Ann. § 91-9-509 (2012)

§ 91-9-509. Settlor as beneficiary of own trust; invalid restraint on transfers; payments for education or support at trustee's discretion; maximum amount accessible by transferees or creditors

(1) If the settlor is a beneficiary of a trust created by the settlor and the settlor's interest in the trust is subject to a provision restraining the voluntary or involuntary transfer of the settlor's interest, the restraint is invalid against transferees or creditors of the settlor. The invalidity of the restraint on transfer does not affect the validity of the trust.

(2) If the settlor is the beneficiary of a trust created by the settlor and the trust instrument provides that the trustee shall pay income or principal or both of the trust for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both of the trust to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount of the trust that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor's proportionate contribution to the trust.

HISTORY: SOURCES: Laws, 1998, ch. 460, § 5, eff from and after passage (approved March 23, 1998).

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Miss. Code Ann. § 91-9-511 (2012)

§ 91-9-511. Application of act; date of trust creation

Sections 91-9-501 through 91-9-511 shall apply to trusts created, defined or determined in trust instruments executed at any time whether before, on or after March 23, 1998.

HISTORY: SOURCES: Laws, 1998, ch. 460, § 6, eff. from and after passage (approved March 23, 1998).

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